

No. 13046

United States
Court of Appeals
for the Ninth Circuit.

ROBERT CARL GETLIN, Administrator of the
Estate of CORINNE CONSTANCE GETLIN,
Deceased,

Appellant,

vs.

MARYLAND CASUALTY COMPANY, a Corpo-
ration,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

OCT 18 1951

PAUL P. O'BRIEN

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States
for the District of Oregon

Civil 5776

ROBERT CARL GETLIN, Administrator of the
Estate of CORINNE CONSTANT GETLIN,
Deceased,

Plaintiff,

vs.

MARYLAND CASUALTY COMPANY, a Corpo-
ration,

Defendant.

COMPLAINT

For cause of action against defendant, plaintiff
alleges:

I.

That during all the times herein mentioned defendant was and now is a corporation, organized under the laws of the State of Maryland, and engaged, among other things, in the business of issuing policies of automobile indemnity insurance in favor of the owners of automobiles in the State of Oregon and other localities.

II.

That at all times herein mentioned, and on or about the 31st day of August, 1947, one Harold M. Kalahar was the owner of a certain 1946 model Chevrolet station wagon; that prior to the 31st day of August, 1947, defendant issued to said Harold M. Kalahar its policy of automobile indemnity in-

surance, the number of which is unknown to this plaintiff, but well known to defendant, in which said policy of insurance the defendant agreed to indemnify the said Harold M. Kalahar against any liability not exceeding the sum of \$50,000, which should arise against the said Harold M. Kalahar in favor of any person or persons who should sustain personal injury, or in favor of the personal representative of any person killed by accident by reason of the ownership, maintenance or use by the said Harold M. Kalahar, or by anyone else with the consent of said Harold M. Kalahar, of said automobile; that said policy of automobile indemnity insurance issued as aforesaid by defendant to said Harold M. Kalahar was in full force and effect covering the use of said 1946 model Chevrolet station wagon by any authorized person on the 31st day of August, 1947.

III.

That on or about said 31st day of August, 1947, one Philip Rodgers, operating said vehicle with the permission of said Harold M. Kalahar, so negligently and carelessly operated said motor vehicle as to cause the death of one Corinne Constance Getlin; that thereafter by consideration of certain proceedings had in the Circuit Court of the State of Oregon for the County of Multnomah, Probate Department, plaintiff Robert Carl Getlin was by said court appointed administrator of the estate of said Corinne Constance Getlin, deceased, and has qualified, and he is now the duly appointed and acting administrator of said estate; that thereafter said plaintiff, as such

administrator, commenced and maintained an action in the Circuit Court of the State of Oregon in and for the County of Multnomah, against said Harold M. Kalahar and Philip Rodgers for damages on account of the wrongful death of said deceased; that said action was numbered 182988 in the records of said court; that said action was thereafter regularly tried and resulted in a judgment being rendered on or about the 21st day of February 1950, in favor of plaintiff and against the said Harold M. Kalahar and Philip Rodgers in the sum of \$5,000.00, together with taxed costs in the sum of \$153.60; that said judgment was docketed in the office of the county clerk on or about the 21st day of February, 1950, and has become final, and said judgment is now wholly unsatisfied and unpaid.

IV.

That there is now due and owing and unpaid from defendant to plaintiff the sum of \$5,153.60, and interest thereon since the 21st day of February, 1950, no part of which has been paid.

V.

That by reason of the failure of defendant to pay said judgment within a period of six months following the day the same was entered, plaintiff is entitled to recover a reasonable attorney fee in this action; that the sum of \$1,000.00 is a reasonable sum which plaintiff should be allowed by way of attorney fee herein.

VI.

That plaintiff is a citizen of the State of Oregon, and defendant is a citizen of the State of Maryland, and a diversity of citizenship exists between plaintiff and defendant; that the amount in controversy in this cause exceeds the sum of \$3,000.00 exclusive of interest and costs.

Wherefore plaintiff prays for judgment against defendant for the sum of Five Thousand, One Hundred Fifty-three and 60/100 Dollars (\$5,153.60) and interest thereon at the rate of six per cent per annum from February 21, 1950, until paid, and for the further sum of One Thousand Dollars (\$1,000.00) reasonable attorney fees plus his costs and disbursements incurred herein.

LORD, ANDERSON &
FRANKLIN,

By /s/ W. A. FRANKLIN,
Attorneys for Plaintiff.

To the clerk of the above-entitled court:

Plaintiff requests a trial by jury in this cause.

/s/ W. A. FRANKLIN,
Of Attorneys for Plaintiff.

[Endorsed]: Filed October 5, 1950.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, and for answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Answering paragraph I of plaintiff's complaint, defendant admits the same.

II.

Answering paragraph II, the defendant admits that on or about the 31st day of August, 1947, one Harold M. Kalahar was the owner of a certain 1946 model Chevrolet station wagon, but except as herein specifically admitted, the defendant denies each and every allegation, matter and thing contained in said paragraph, and the whole thereof.

III.

Answering paragraph III, the defendant denies that on or about the 31st day of August, 1947, one Philip Rodgers was operating said vehicle with the permission of said Harold M. Kalahar, and further denies that at said time the said Philip Rodgers so negligently and carelessly operated said motor vehicle as to cause the death of one Corinne Constance Getlin, but except as specifically denied herein, the defendant admits the remaining allegations of said paragraph.

IV.

Answering paragraphs IV and V, the defendant denies each and every allegation, matter and thing contained therein, and the whole thereof.

V.

Answering paragraph VI herein, defendant admits the same.

And for a separate answer and defense, defendant alleges as follows:

I.

That during all times herein mentioned, the defendant was and now is a corporation duly organized under the laws of the State of Maryland and duly authorized and admitted to do business in various states, including Oregon and Texas, and as a part of its business is authorized to issue policies of automobile indemnity insurance in favor of owners of automobiles.

II.

That on or about the 31st day of July, 1947, this answering defendant did execute and deliver to Harold M. Kalahar, whose address was 401 Texas Building, Dallas, Texas, a certain automobile public liability policy covering a 1946 Chevrolet Fleet Master station wagon which is the same automobile described in plaintiff's complaint.

III.

That said policy of liability insurance provided certain coverages, subject, however, to the limits of

liability, exclusions conditions and other terms of said policy, including the riders attached thereto. Under "Coverage A—Bodily Injury Liability" said policy provided that the defendant would pay on behalf of the insured all sums which the insured should become obligated to pay by reason of liability imposed upon him by law for damages, including damages for care and loss of services because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons caused by accident and arising out of the ownership, maintenance or use of the automobile. Said policy also contained an exclusion which provided that the policy did not apply under coverage A (bodily injury liability) to bodily injury to or sickness, disease or death of any employee of the insured while engaged in the employment other than domestic of the insured. Said policy further provided that the coverage therein afforded did not apply to any employee with respect to injury to or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

IV.

The policy of insurance above referred to and described was in full force and effect on or about the 31st day of August, 1947, at the time of the death of Corinne Constance Getlin, and there were no other provisions of said policy affecting the exclusion and limitation aforementioned.

V.

That on or about the 14th day of June, 1948, the plaintiff herein commenced an action in the Circuit Court of the State of Oregon for the County of Multnomah, against Harold M. Kalahar and Philip Rodgers, said case being known as Case No. 182-988. In said action the plaintiff sought to recover damages for the death of Corinne Constance Getlin which occurred in an accident occurring on August 31, 1947, when the decedent was riding in the 1946 model Chevrolet station wagon hereinabove described owned by the defendant Harold M. Kalahar and operated by the defendant Philip Rodgers.

VI.

In said complaint above described, the plaintiff alleged that at the time of the decedent's death, plaintiff (meaning decedent) was "employed by defendant Harold M. Kalahar as a solicitor" and was provided with transportation from place to place in a vehicle owned by the defendant Harold Kalahar, and further alleged that said defendant Harold M. Kalahar did furnish the plaintiff (meaning decedent) with free transportation from state to state and from city to city, and that said transportation was a part of the compensation paid plaintiff (meaning decedent) for her services, and that in addition to the commissions and transportations, the defendant Harold M. Kalahar did furnish a driver to transport plaintiff (meaning decedent) from place to place. That in said complaint the plaintiff further alleged that at the time of the

accident the plaintiff (meaning decedent) was being transported from Pendleton, Oregon, to The Dalles, Oregon, and that said transportation was pursuant to the plaintiff's (meaning decedent's) contract of employment with the defendant Harold M. Kalahar. Said complaint further alleged that due to the negligence of both of defendants the decedent was killed and that thereafter the plaintiff in this case was duly appointed the administrator of the estate of said deceased.

VII.

Thereafter, this defendant did advise its assured Harold M. Kalahar, and his driver Philip Rodgers that the plaintiff's complaint was based upon an employer and employee relationship between Kalahar and the decedent and Kalahar and Rodgers. Defendant further advised the said Kalahar and Rodgers that it would not pay any judgment based on such a relationship because of the provisions of its policy hereinabove described, and that any defense furnished by this defendant would be made under a full reservation of right to refuse to pay any judgment, and that this defendant did not waive said rights by proceeding with the defense of such case. It further advised both said Kalahar and Rodgers that each had the right to engage his own attorneys to defend said action. Neither Kalahar nor Rodgers engaged attorneys to defend said action.

VIII.

On or about the 17th day of June, 1949, the plain-

tiff filed an amended complaint substantially the same as the original complaint hereinabove described. The changes made in the amended complaint were limited to substituting the name or description of the decedent in lieu of the word plaintiff; adding three allegations of negligence; making some changes in the damages alleged, and the description of the action.

IX.

Thereafter, the defendant herein instructed its attorneys, Cake, Jaureguy & Tooze and Herbert C. Hardy, to undertake the defense of said case on behalf of the said Kalahar and Rodgers, and said attorneys did thereafter on their behalf interpose an answer to the amended complaint above described denying generally the allegations in plaintiff's amended complaint.

X.

Thereafter, on or about the 6th day of February, 1950, the said case came on for trial before the Honorable Charles W. Redding, Judge of the Circuit Court of the State of Oregon for the County of Multnomah, and said case was tried to a jury, and on the 8th day of February, 1950, the Honorable Judge Redding instructed the jury in said case that the plaintiff was bound to prove the allegations of his complaint which had been denied by the defendant, and particularly instructed the jury that before the jury could bring in any verdict in said case against the defendant Kalahar, that they must find that the defendant Philip Rodgers was an

employee of the defendant Kalahar, and also that the decedent Corinne Constance Getlin was an employee of the defendant Kalahar.

XI.

Thereafter, the jury retired and did find a verdict in favor of plaintiff Getlin against both of the defendants Kalahar and Rodgers, and based upon said verdict a judgment was rendered in said case on or about the 21st day of February, 1950, in favor of the plaintiff and against the said Harold M. Kalahar and Philip Rodgers in the sum of \$5,000.00, together with costs taxed in the sum of \$153.60, which judgment was docketed in the office of the County Clerk on or about the 21st day of February, 1950, and has become final, and which is the judgment upon which the present plaintiff bases his complaint herein.

XII.

That by reason of the foregoing facts, the policy issued by the defendant to Harold M. Kalahar does not cover the judgment rendered against either Harold M. Kalahar or the defendant Philip Rodgers, and therefore no sums are due from the defendant to the plaintiff.

Wherefore, the defendant having fully answered the plaintiff's complaint, demands that the plaintiff take nothing thereby and that judgment be rendered against the plaintiff and in favor of the de-

pendant for its costs and disbursements incurred herein.

CAKE, JAUREGUY & TOOZE,

By /s/ HERBERT C. HARDY,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 24, 1950.

[Title of District Court and Cause.]

PRE-TRIAL ORDER

On December 18, 1950, a pre-trial conference was held in open Court before the undersigned Judge of this Court. Plaintiff appeared by his attorney, Wesley Franklin, of Lord, Anderson and Franklin, and defendant appeared by its attorney, Herbert C. Hardy, of Cake, Jaureguy & Tooze.

Agreed and Stipulated Facts

1. Defendant was at all times herein pertinent, and now is a corporation organized under the laws of the State of Maryland, and is authorized and licensed to do business in Oregon and Texas, and as a part of its business to issue policies of automobile liability insurance in favor of owners of automobiles.

2. The plaintiff is the duly appointed, qualified and acting administrator of the Estate of Corinne Constance Getlin, deceased, by virtue of proceed-

ings in the Circuit Court of the State of Oregon, County of Multnomah, Probate Department, and is a citizen of the State of Oregon.

3. At all times mentioned herein, one Harold M. Kalahar, hereinafter referred to as Kalahar, was the owner of a 1946 Chevrolet station wagon.

4. At all times herein pertinent, there was in full force and effect a certain automobile public liability policy issued by the defendant herein to Kalahar and covering the above-described 1946 Chevrolet station wagon. The photostatic copy of the automobile policy basic liability form of the Maryland Casualty Company of Baltimore, together with the photostatic copy of the Home Office copy of the specifications regarding the policy limits, the description of the assured and his vehicle and the photostatic copy of the rider (form 158) attached to said automobile policy, all of which comprise defendant's Exhibit A, constitute a genuine and accurate reproduction of the automobile public liability policy issued by defendant to Kalahar, and constitute the policy of liability insurance on which plaintiff relies in this action.

5. At various dates in July, 1947, Kalahar did hire various persons in Iowa and Nebraska for the purpose of soliciting magazine subscriptions in various towns from state to state throughout the entire Western United States. Included in the group of persons so hired were the decedent, Corinne Constance Getlin and one Philip Rodgers. Kalahar did furnish free transportation to said

solicitors from state to state and city to city. Kalahar also designated one of such persons to serve as a driver in the transportation of said solicitors, and at all times herein pertinent Philip Rodgers was designated as the driver of and was driving the 1946 Chevrolet station wagon, but as such driver he received no additional compensation.

6. On August 31, 1947, the decedent, together with Rodgers and several other magazine soliciting employees of Kalahar, were being transported in said 1946 Chevrolet station wagon from Spokane, Washington, where they had been soliciting magazine subscriptions, to Portland, Oregon, where they were to do like soliciting. Said transportation was pursuant to their respective contracts of employment with Kalahar.

7. While decedent was thus en route from Spokane to Portland in said 1946 Chevrolet station wagon with several other employees of Kalahar, an accident occurred between the 1946 Chevrolet station wagon then being driven by Philip Rodgers, and another vehicle. As a result of that accident, the decedent was killed.

8. On June 16, 1948, the present plaintiff commenced an action against Kalahar and Philip Rodgers by the filing of a complaint for damages for the wrongful death of the decedent, Corinne Constance Getlin, in the Circuit Court of the State of Oregon, for the County of Multnomah, said case being numbered 182-988. An amended complaint was filed in said action on June 20, 1948, which

changed no allegations pertinent to the present case.

9. In said complaint the plaintiff alleged that Kalahar did hire certain salesmen, paid them on a commission basis and in connection with said employment did furnish free transportation to said solicitors from state to state and city to city, said transportation being a part of the compensation paid solicitors for their services; that Corinne Constance Getlin was so employed and that at the time of the accident and her death, was being transported in Kalahar's car driven by Rodgers, pursuant to her contract of employment with Kalahar; that Kalahar and Rodgers were guilty of negligence which caused decedent's death, wherefore plaintiff demanded \$10,000 in damages.

10. The defendant herein, Maryland Casualty Company, after the filing of said complaint, advised Kalahar in writing that the complaint was based on an employer-employee relationship between Kalahar and the decedent and that it would not pay any judgment against Kalahar based on such a relationship because of the provisions of the Exclusion section of said policy which provided that the policy did not apply

“(d) under coverages A and X, to bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, * * *”

The defendant herein further advised the said Kalahar that any defense furnished by it in said action would be under a full reservation of right to refuse

to pay any judgment, and that it did not waive any of its rights by proceeding with the defense of such case. The present defendant further advised Kalahar that he had a right to engage his own attorney to defend said action, but Kalahar did not do so.

11. The defendant herein, after the filing of said complaint, also advised Philip Rodgers, the co-defendant in the action in the Circuit Court, that the complaint was based on an employer-employee relationship between Kalahar and the decedent and Kalahar and Rodgers, and that it would not pay any judgment against Rodgers founded on such relationship because of a limitation in the definition of the persons insured that the insurance provided did not apply

“(d) to any employee with respect to injury to or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.”

The defendant herein further advised the said Philip Rodgers that any defense furnished by it would be under a full reservation of rights to refuse to pay any judgment, and that it did not waive any of its rights by proceeding with the defense of such case. It further advised Rodgers that he had the right to engage his own attorney to defend said action, but Rodgers did not do so.

12. Thereafter, this defendant did cause its attorneys, Cake, Jaureguy & Tooze and Herbert C.

Hardy, to interpose an answer in said case in the Circuit Court of the State of Oregon for the County of Multnomah, which answer denied all of the allegations of the plaintiff's complaint therein.

13. On February 6, 1950, said case came on for trial in said Court before the Honorable Charles W. Redding and was tried by a jury. After both parties had rested in said case, the trial judge instructed the jury on the issues of the case and specifically instructed them as follows:

"I instruct you that before you can bring in any verdict in this case against the individual defendant Harold M. Kalahar you must also find that the defendant Philip Rodgers was an employee of the defendant Kalahar and also that the decedent, Corinne Constance Getlin, was also an employee of the defendant Kalahar as I shall later define that relationship to you.

"You are instructed that in determining whether or not the decedent, Corinne Constance Getlin, and the defendant Philip Rodgers were employees of the defendant Harold M. Kalahar, the test as to the existence of the relationship is whether there is an understanding between the parties that one is to render personal services to or for the benefit of the other and recognition by them of the right of Harold M. Kalahar to order and control the other in the performance of the work and to direct the manner and method of its performance."

14. Thereafter, the jury did take said case under

consideration and did render its verdict in favor of the plaintiff and against the defendant Kalahar and the defendant Rodgers, and each of them, and adjudged the plaintiff's damages in the sum of Five Thousand Dollars (\$5,000). Based upon said verdict, the Honorable Charles W. Redding did on the 21st day of February, 1950, enter a judgment in favor of the present plaintiff against the said Harold M. Kalahar and Philip Rodgers, and each of them, in the sum of Five Thousand Dollars (\$5,000), together with plaintiff's costs and disbursements in the amount of One Hundred, Fifty-three Dollars, Sixty Cents (\$153.60), which judgment was entered in the journal on February 21, 1950, and docketed on February 23, 1950, in Book 46, page 127, and is the judgment upon which the plaintiff bases this present action.

15. The defendant herein has refused to pay to the plaintiff said judgment, or any part thereof.

Stipulation

It is stipulated by and between the parties hereto that the defendant's policy does not cover the defendant Rodgers and therefore regardless of the outcome of this lawsuit so far as the defendant Kalahar is concerned, no judgment can be rendered in this case against the defendant Maryland Casualty Company based upon the judgment against Philip Rodgers.

Statement of Issue

It is agreed by both parties that the only issue involved in this case is whether or not, at the time

of the death of the decedent, the decedent was “engaged in the employment of the insured,” Kalahar, within the meaning of the policy.

Plaintiff's Contention

Plaintiff's contention on the foregoing issue is that under the foregoing stipulated statement of facts, decedent was not so engaged at the time of the accident.

Defendant's Contention

1. Defendant contends that the question of whether or not plaintiff was “engaged in the employment of the insured,” within the meaning of the policy at the time of the accident, was determined in the action brought by the plaintiff against Kalahar and Rodgers in the Circuit Court of the State of Oregon for the County of Multnomah, and that the same is *res judicata* and cannot be considered by this Court.

2. Defendant's alternative contention is that the decedent was “engaged in the employment of the insured,” Kalahar, within the meaning of the policy at the time of the death of the decedent.

Exhibits

The following exhibits are below enumerated and identified and no further identification will be required at the time of the trial, and it is stipulated between the parties that the documents are authentic, and in case of copies that they are true copies

of the original and shall have the same effect as if they were originals.

The plaintiff has no exhibits.

The following defendant's exhibits shall be admitted without objection:

Defendant's Exhibit A: Exhibit A, consisting of six photostatic pages, the first four of which are standard automobile insurance policy issued by defendant to Kalahar, to which is attached one photostatic page being a copy of the home office records showing the coverage, and one folded photostatic page being a rider to said policy known as form 158.

It is stipulated that the typewritten inserts on the home office work sheet concerning the amount of coverage, the name of the insured, the vehicle covered and the period of the policy and the identification of riders attached were part of the original policy issued to Kalahar.

Defendant's Exhibit B: Exhibit B, consisting of 13 photostatic pages, which is a certified copy of all the pleadings and documents in the case of Getlin vs. Kalahar and Rodgers in the Circuit Court of the State of Oregon, for the County of Multnomah, Case No. 182-988, consisting of the Complaint, Amended Complaint, Answer to Amended Complaint, Verdict and Judgment Order, all of which have been certified by the County Clerk of Multnomah County.

Defendant's Exhibit C: Exhibit C, consisting of three pages, which is the letter of reser-

vation of rights sent by Maryland Casualty Company to and received by Harold M. Kalahar.

Defendant's Exhibit D: Exhibit D, consisting of three pages, which is the letter of reservation of rights sent by Maryland Casualty Company to and received by Philip Rodgers.

Defendant's Exhibit E: Exhibit E, being a certified copy of all of the instructions to the jury given by the Honorable Charles W. Redding in the case of Robert Carl Getlin, Administrator, vs. Harold M. Kalahar and Philip Rodgers, in the Circuit Court of the State of Oregon for the County of Multnomah, bearing Clerk's No. 182-988.

Based upon said pre-trial hearing, It Is Hereby Considered, Ordered and Adjudged that this pre-trial order shall govern the proceedings and trial in the above-entitled action and that there are no issues of law or fact except as set forth in this order. This pre-trial order shall not be amended during the trial except by consent or to prevent manifest injustice.

Dated this 8th day of January, 1951.

/s/ GUS J. SOLOMON,

United States District Judge.

Approved:

By /s/ W. A. FRANKLIN,

Of Attorney for Plaintiff.

By /s/ HERBERT C. HARDY,

Of Attorneys for Defendant.

EXHIBIT A

AUTOMOBILE POLICY**Basic Liability Form****Maryland Casualty Company**
BALTIMORE**Policy No. 09****DECLARATIONS****Renewal of**

1. Name of Insured

Address (No. Street Town or City Zone No. County State)

Automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:

Named insured is Occupation of the named insured is
(Individual, corporation, or partnership) (If married woman, give husband's occupation or business)2. Policy Period: From to 12:01 A. M.
Standard Time at the address of the named insured as stated herein.

3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

COVERAGES	A—Bodily Injury Liability	B—Property Damage Liability	X—Medical Payments
AMOUNTS OF LIABILITY	\$ each person \$ each accident	\$ each accident	\$ each person

4. Description of the automobile

Premiums

Trade Name	Model		Body Type; Truck Size; Tank Gallonage Capacity; or Bus Seating Capacity	Serial No. (S) and Motor No. (M)	Coverage A Bodily Injury Liability	Coverage B Property Damage Liability	Coverage X Medical Payments
	Year	Series					
					\$	\$	\$
Total					\$	\$	\$
Special charge as per endorsement attached					\$		
Total Premium \$							

Number of printed endorsements forming a part of the policy on its effective date:

5. The purposes for which the automobile is to be used are

The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in item 1, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading of the automobile.

6. The risk was insured during the past year in

7. (a) Except with respect to bailment lease, conditional sale, mortgage or other encumbrance the named insured is the sole owner of the automobile; (b) during the past year no insurer has canceled any automobile insurance issued to the named insured. If any, to (a) or (b):

Insured or Agent
(Give Code No. and Name)

Countersigned this day of

19

by

Authorized Representative.

MARYLAND CASUALTY COMPANY

(A Stock Insurance Company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this

INSURING AGREEMENTS

VERAGE A—BODILY INJURY LIABILITY

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed on him by law for damages, including damages for care and of services, because of bodily injury, including death at the time resulting therefrom, sustained by any person or persons caused by accident and arising out of the ownership, maintenance or use of the automobile.

VERAGE B—PROPERTY DAMAGE LIABILITY

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed on him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

VERAGE X—MEDICAL PAYMENTS

To pay to or for each person who sustains bodily injury, caused by accident, while in or upon, entering or alighting from the automobile classified as "pleasure and business" if the injury arises out of the use thereof by or with the permission of the named insured, or (2) any other private passenger automobile with respect to the use of which insurance is afforded under Insuring Agreement V of this policy, if the injury arises out of the use thereof and results from (a) the operation of the automobile by the named insured or spouse or by a private or domestic servant of either or (b) the occupancy of the automobile by the named insured or spouse, the reasonable expense of necessary medical, surgical, ambulance, hospital professional nursing services and, in the event of death resulting from such injury, the reasonable funeral expense, all incurred within one year from the date of accident.

The insurance afforded with respect to such other automobiles shall be excess insurance over any other valid and collectible medical payments insurance applicable thereto.

Settlement, Supplementary Payments

In respects such insurance as is afforded by the other terms of this policy under coverages A and B the company shall

defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company;

pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and expenses incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident;

reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request, if the company agrees to pay the amounts incurred under this insuring agreement, except settlements of claims and suits, in addition to the applicable limit of liability of this policy.

Definition of "Insured"

The unqualified word "insured" wherever used in coverages A and B and in other parts of this policy, when applicable to coverages, includes the named insured and, except where specifically stated to the contrary, also includes any person using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is with the permission of the named insured. Insurance with respect to any person or organization other than the named insured does not apply:

to injury to or death of any person who is a named insured; with respect to the automobile while used with any trailer not covered by like insurance in the company; or with respect to any trailer covered by this policy while used with any automobile not covered by like insurance in the company;

(c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station or public parking place, with respect to any accident arising out of the operation thereof;

(d) to any employee with respect to injury to or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

Automobile Defined, Trailers, Two or More Automobiles

Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semitrailer described in this policy. The word "trailer" shall include semitrailer.

Such insurance as is afforded by this policy for bodily injury liability and for property damage liability with respect to a private passenger automobile applies also to a trailer not described in this policy while used with such automobile, if such trailer is designed for use with a private passenger automobile and is not a home, cabin, office, store, product or process display, demonstration or passenger trailer. While not used with such automobile, such insurance applies also to such trailer but only with respect to the named insured and does not apply to the use of the trailer in his business occupation or with an automobile of the commercial or truck type owned or used by him.

When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respect limits of liability under coverages A and B.

Use of Other Automobiles

Such insurance as is afforded by this policy for bodily injury liability and for property damage liability with respect to the automobile classified as "pleasure and business" applies (1) to the named insured, if an individual and the owner of such automobile, or if husband and wife either or both of whom own such automobile, and (2) to the spouse of such individual if a resident of the same household, to the employer of such named insured or spouse and to the parent or guardian of such named insured or spouse, if a minor, as insured, with respect to the use of any other automobile by or in behalf of such named insured or spouse.

This insuring agreement does not apply:

(a) to any automobile owned in full or in part by, registered in the name of, hired as part of a frequent use of hired automobiles by, or furnished for regular use to, the named insured or a member of his household other than a private chauffeur or domestic servant of the named insured or spouse;

(b) with respect to such employer, parent or guardian, to any automobile owned in full or in part by him or registered in his name or hired by him as part of a frequent use of hired automobiles;

(c) to any automobile not of the private passenger type while used in the business or occupation of the named insured or spouse, or to any private passenger automobile while used in such business or occupation if operated by a person other than the named insured or spouse or such chauffeur or servant unless the named insured or spouse is present in such automobile;

(d) to any insured other than as defined in this insuring agreement;

(e) to injury to or death of any person who is a named insured;

(f) to any accident arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place.

Temporary Use of Substitute Automobile

While an automobile owned in full or in part by the named insured is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such automobile applies with respect to another automobile not so owned while temporarily used as the substitute for such automobile. This insuring agreement does not cover as an insured the owner of the substitute automobile or any employee of such owner.

Attach endorsements in this space

Insurance for Newly Acquired Automobiles

The named insured who is the owner of the automobile and the ownership of another automobile and so notifies the company within thirty days following the date of its delivery of such insurance as is afforded by this policy applies also to other automobile as of such delivery date:

If it replaces an automobile described in this policy, but only to the extent the insurance is applicable to the replaced automobile, or

If it is an additional automobile and if the company insures all automobiles owned by the named insured at such delivery date, but only to the extent the insurance is applicable to all such previously owned automobiles.

This insuring agreement does not apply: (a) to any loss at which the named insured has other valid and collectible insurance, or (b) except during the policy period, but if such delivery date is prior to the effective date of this policy, the policy applies as of such effective date.

The named insured shall pay any additional premium required because of the application of the insurance to such

other automobile. The insurance terminates upon the replaced automobile on such delivery date.

Policy Period, Territory, Purpose of Use

This policy applies only to accidents which occur during the policy period, while the automobile is within the United States of America, its territories or possessions, Canada or Newfoundland, or is being transported between ports thereof, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

Bail Bond Expense

The company shall pay the cost of bonds, but without obligation to apply for or furnish such bonds, guaranteeing the insured's appearance in court if such appearance is required by reason of an accident or a traffic law violation occurring during the policy period and arising out of the use of an automobile with respect to which use insurance is afforded such insured under coverage A of this policy. The company's liability under this insuring agreement with respect to each bond shall not exceed the usual charges of surety companies for such bond nor \$100.

EXCLUSIONS

Policy does not apply:

When the automobile is used as a public or livery conveyance, or such use is specifically declared and described in this policy and premium charged therefor;

Liability assumed by the insured under any contract or agreement;

Under coverages A and B, while the automobile is used for towing of any trailer owned or hired by the named insured not covered by like insurance in the company; or while trailer covered by this policy is used with any automobile owned or hired by the named insured and not covered by like insurance in the company;

(d) under coverages A and X, to bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of the automobile;

(e) under coverage A, to any obligation for which the insured or any company as his insurer may be held liable under any workmen's compensation law;

(f) under coverage B, to injury to or destruction of property owned by, rented to, in charge of or transported by the insured;

(g) under coverage X, to bodily injury to or death of any person to or for whom benefits are payable under any workmen's compensation law because of such injury or death.

CONDITIONS

Limit of Liability. Coverage A. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including expenses for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by more persons in any one accident.

Limit of Liability. Coverage X. The limit of liability for all payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages incurred by or on behalf of each person who sustains bodily injury, including death resulting therefrom, in any one accident.

Limit of Liability. The inclusion herein of more than one person shall not operate to increase the limits of the company's liability.

Financial Responsibility Laws. Coverages A and B. Such insurance as is afforded by this policy for bodily injury liability property damage liability shall comply with the provisions of any motor vehicle financial responsibility law of any state or territory which shall be applicable with respect to any such injury arising out of the ownership, maintenance or use of an automobile during the policy period, to the extent of the age and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

Assault and Battery. Coverages A and B. Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

Notice of Accident. When an accident occurs written notice shall be given by or on behalf of the insured to the company or its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

7. Notice of Claim or Suit. Coverages A and B. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

8. Assistance and Cooperation of the Insured. Coverages A and B. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

9. Medical and Other Reports; Examination. Coverage X. The injured person or someone on his behalf shall, as soon as practicable after each request from the company, furnish reasonably obtainable information pertaining to the accident and injury, and execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

10. Proof and Payment of Claim. Coverage X. As soon as practicable after completion of the services or after the rendering of services which in cost equal or exceed the limit of liability for medical payments or after the expiration of one year from the date of the accident, whichever is the first, the injured person or someone on his behalf shall give to the company written proof of claim under oath, stating the name and address of each person and organization which has rendered services, the nature and extent and the dates of rendition of such services, the itemized charges therefor and the amounts paid thereon. Upon the company's request, the injured person or someone on his behalf shall cause to be given to the company by each such person and organization written proof of claim under oath, stating the nature and extent and dates of rendition of such services, the itemized charges therefor and the payments received thereon.

The company shall have the right to make payment at any time to the injured person or to any such person or organization on account of the services rendered, and a payment so made shall reduce to the extent thereof the amount payable hereunder to or for such injured person on account of such injury. Payment hereunder shall not constitute admission of liability of the insured or, except hereunder, of the company.

(Continued on reverse side)

VII

IX

22

CONDITIONS (Continued)

Action Against Company. Coverages A and B. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation shall have been finally determined either by judgment of the insured after actual trial or by written agreement between the insured, the claimant and the company.

by person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a codefendant in any action against the insured to determine the insured's liability.

bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations under.

Action Against Company. Coverage X. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

Other Insurance. Coverages A and B. If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance under Insuring Agreements V and VI shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under this policy applicable with respect to the automobile or otherwise, or as a loss covered under either or both of said insuring agreements.

Subrogation. Coverages A and B. In the event of any payment under this policy, the company shall be subrogated to all insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

Waiver. Notice to any agent or knowledge possessed by agent or by any other person shall not effect a waiver or a release in any part of this policy or estop the company from

asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an authorized representative of the company.

16. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the company within sixty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under coverage X while the automobile is used by such person, until the appointment and qualification of such legal representative but in no event for a period of more than sixty days after the date of such death or adjudication.

17. Cancellation. This policy may be canceled by the named insured by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the named insured.

18. Declarations. By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the MARYLAND CASUALTY COMPANY has caused this policy to be signed by its president and countersigned on the declarations page by a duly authorized representative of the company.

Sam C. Bramble
Secretary

Stewart Wexler
President

No. 09

A STOCK COMPANY
TEXAS STANDARD
AUTOMOBILE POLICY
Basic Liability Form

Maryland Casualty
Company

ISSUED TO

Expires

at 12:01 A. M.

19

PLEASE READ YOUR POLICY

Carefully note Conditions requiring
Immediate Notice of Every Accident
and of Every Shift.

CHAS. L. LEXLER & CO.

Date Received at RECORDING DEPT. AUG 4 1947

Recording Date

MARYEAND CASUALTY COMPANY TEXAS STANDARD AUTOMOBILE APP.

USE OFFICE USE ONLY	Yearly	Class	No. Cars	Premium	Yearly	Class	No. Cars	Premium	Total Prem.	Checked by
BODILY INJURY	02	141510	1							J. H.
PROPERTY DAMAGE										
COLLISION										
MEDICAL PAYMENTS										
Trans.	State	City	County	Eng. and Service	B. F. A.	Installment				Approved at H.
01	42									Credit Report

DECLARATIONS

Item 1. Name of Insured

Harold H. Enlander

Renewal of

How

8 3 48

Address

401 Texas Bank Bldg., Dallas, Texas

(No.

Street

Town or City

County

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:

The named insured is

Individual

Occupation of the named insured: Saloman
Kopton Readers Society

Item 2. Policy Period: From

Standard Time at the address of the named insured

12:01 A. M.

Item 3.

Home Office Reins. Use Only

Cession No.

Amount

Co.

Prem.

COVERAGES	A—Bodily Injury Liability	B—Property Damage Liability	X—Medical Payments
LIMITS OF LIABILITY	\$ 25,000.00 each person \$ 50,000.00 each accident	\$ 5,000.00 each accident	\$ 500.00 each person

TRADE NAME	MODEL	EXPOSURE	EX. PREMIUM	PREMIUMS	Coverage A Bodily Injury Liability	Coverage B Property Damage Liability	Coverage X Medical Payments
4 Trade Name 4	7-2000	Station wagon Floorboard	22,000	12.05	12.00	4.50	
Totals				12.05	12.00	4.50	
Total Premium \$				38.55			

Item 5. The purposes for which the automobile is to be used are

Pleasure and Business

(a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in item 1, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 6. The risk was insured during the past year in

How

Item 7. (a) Except with respect to bailment lease, conditional sale, mortgage or other encumbrance the named insured is the sole owner of the automobile; (b) during the past year no insurer has canceled any automobile insurance issued to the named insured. (c) except, if any, to (a) or (b):

No exceptions

Broker or Sub-Agent

31st

July,

47

(Give Code No. and Name)

PASTE ALL ENDORSEMENTS ON BACK

158. AMENDMENT OF AUTOMOBILE POLICY

Available only with respect to such and so many of the coverages as are defined in the policy and for which insurance is afforded as indicated by specific premium charge in Item 3 of the Declarations.)

Agreed that the policy is amended as follows:

Declarations

- A. Item 3, Medical Payments Coverage reads:
Medical Payments
- B. Item 4, Description as to size of the automobile reads:
Body Type; Truck Size;
(Truck Load Capacity);
Tank Gallonage Capacity;
or Bus Seating Capacity

Insuring Agreements

- A. The words "bodily injury," and the word "injury" when referring to bodily injury, include "sickness or disease."
- B. The following is added if not provided by the policy:

Bail Bond Expense

The company shall pay the cost of bonds, but without obligation to apply for or furnish such bonds, guaranteeing the insured's appearance in court if such appearance is required by reason of an accident or a traffic law violation occurring during the policy period and arising out of the use of an automobile with respect to which use insurance is afforded such insured under bodily injury liability coverage of this policy. The company's liability under this insuring agreement with respect to each bond shall not exceed the usual charges of surety companies for such bond nor \$100.

Medical Payments Coverage reads:

Medical Payments—To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, ambulance, hospital, professional nursing and funeral services, to or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon, entering or alighting from the automobile if the automobile is being used by the named insured or with his permission.

- D. In Insuring Agreement III, Definition of "Insured", divisions (a) and (b) do not apply.

Insuring Agreements headed: "Automobile Defined, Trailers, Two or More Automobiles"; "Use of Other Private Passenger Automobiles"; "Use of Other Automobiles"; "Temporary Use of Substitute Automobile"; and "Automatic Insurance for Newly Acquired Automobiles," are replaced by the following:

IV Automobile Defined, Trailers, Two or More Automobiles

- (a) **Automobile**. Except where stated to the contrary, the word "automobile" means:

- (1) **Described Automobile**—the motor vehicle or trailer described in this policy;
- (2) **Utility Trailer**—under bodily injury liability, property damage liability and medical payments, a trailer not so described, if designed for use with a private passenger automobile, if not being used with another type automobile and if not a home, office, store, display or passenger trailer;
- (3) **Temporary Substitute Automobile**—under bodily injury liability, property damage liability and medical payments, an automobile not owned by the named insured while temporarily used as the substitute for the described automobile while withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;
- (4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured who is the owner of the described automobile, if the named insured notifies the company within thirty days following the date of its delivery to him, and if either it replaces an automobile described in this policy or the company insures all automobiles owned by the named insured at such delivery date; but the insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured has other valid and collectible insurance. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under the coverages of comprehensive, collision or upset, fire, theft, windstorm and combined additional coverage its equipment and other equipment permanently attached thereto.

- (b) **Semitrailer**. The word "trailer" includes semitrailer.

- (c) **Two or More Automobiles**. When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability for bodily injury liability and property damage liability and separate automobiles as respects limits of liability, including any deductible provisions, under coverages of comprehensive, collision or upset, fire, theft, windstorm, combined additional coverage and towing and labor costs.

V Use of Other Automobiles

If the named insured is an individual who owns the automobile classified as "pleasure and business" or husband and wife either or both of whom own said automobile, such insurance as is afforded by this policy for bodily injury liability, for property damage liability and for medical payments with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(See other side)

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured, (2) the spouse of such individual if a resident of the same household and (3) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III, Definition of Insured, does not apply to this insurance.

(b) This insuring agreement does not apply:

- (1) to any automobile owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to the named insured or a member of his household other than a private chauffeur or domestic servant of the named insured or spouse;
- (2) to any automobile while used in the business or occupation of the named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, chauffeur or servant;
- (3) to any accident arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place;
- (4) under medical payments, unless the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by such chauffeur or servant, or from the occupancy of said automobile by such named insured or spouse.

Exclusions

A. In exclusion (c) the words "named insured" are amended to read "insured."

B. Exclusion (d) is amended to read as follows:

- (d) under bodily injury liability and medical payments, to bodily injury to or sickness, disease or death of any employee of the insured while engaged in the employment, other than domestic, of the insured or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law;

C. Exclusion (g) is amended to read as follows:

- (g) under medical payments, to bodily injury to or sickness, disease or death of any person if benefits therefor are payable under any workmen's compensation law;

D. Exclusion (a) is eliminated.

Conditions

A. The insurance under bodily injury liability and property damage liability with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to said automobiles or otherwise.

B. The insurance afforded under medical payments with respect to other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible medical payments insurance applicable thereto.

This endorsement forms a part of Policy No. 15-109125 issued to Harold M. Kalshar

by Maryland Casualty Company of Baltimore, Md.
(Name of Insurance Company)

and is effective from July 31, 1947
(12:01 A. M. Standard Time)

undersigned at Dallas, Texas

(Duly Authorized Representative)

FORM 158—AMENDMENT OF AUTOMOBILE POLICY
Standard Automobile Endorsement
Amended Dec. 1, 1947.

EXHIBIT B

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182-988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP
RODGERS,

Defendants.

JUDGMENT ORDER

This cause came on for trial before the Honorable Charles W. Redding, Judge of the above-entitled court, and the jury duly impanelled and sworn on the 6th day of February, 1950, the plaintiff appearing in person and by and through W. A. Franklin, of his attorneys, and the defendants appearing in person and by and through Herbert Hardy and Harold Hutchinson, of their attorneys, whereupon opening statemens of counsel were made and testimony taken, and thereafter the cause was argued by counsel to the jury, and the court instructed the jury as to the law, and the jury retired in charge of a properly sworn officer to consider their verdict, and thereafter the jury returned into court the following verdict:

“In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182-988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP
RODGERS,

Defendants.

VERDICT

We, the jury, duly impanelled and sworn to try the above-entitled cause, do find our verdict for the plaintiff and against the defendants and each of them, and assess plaintiff's damages in the sum of \$5,000.

/s/ LEE F. GRIFFITH,
Foreman.”

Now, therefore, based upon said verdict,

It Is Hereby Ordered and Adjudged That plaintiff have of and take judgment against defendants, Harold M. Kalahar and Philip Rodgers, and each of them, in the sum of \$5,000, together with plaintiff's costs and disbursements herein taxed at \$153.60, and that execution issue therefor.

Dated this 21st day of February, 1950.

/s/ CHARLES W. REDDING,
Judge.

State of Oregon,
County of Multnomah—ss.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 21st day of February, 1950.

/s/ HERBERT C. HARDY,
Of Attorneys for Defendants.

[Stamped]: Book 1006, page 158. Judgment docketed Feb. 23, 1950, book 46, page 127 and 202. Entered in Journal Feb. 21, 1950.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182-988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP
RODGERS,

Defendants.

VERDICT

We, the jury, duly impanelled and sworn to try the above-entitled cause, do find our verdict for the plaintiff and against the defendants and each of

them, and assess plaintiff's damages in the sum of \$5,000.

/s/ LEE F. GRIFFITH,
Foreman.

[Endorsed]: Filed Feb. 9, 1950; Circuit Court,
Oregon.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182-988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP
RODGERS,

Defendants.

ANSWER TO AMENDED COMPLAINT

Come now the defendants, and for answer to plaintiff's amended complaint, deny each and every allegation, matter and thing contained therein, and the whole thereof.

Wherefore, defendants having fully answered plaintiff's complaint, demand that plaintiff take nothing thereby and that judgment be given for the defendants and for their costs and disbursements incurred herein.

CAKE, JAUREGUY & TOOZE,
Attorneys for Defendants.

State of Oregon,
County of Multnomah—ss.

I, Herbert C. Hardy, being first duly sworn, depose and say: That I am one of the attorneys for the defendants in the above-entitled case; that I make this affidavit for the reason that defendants are not now within the County of Multnomah, State of Oregon; that I have read the foregoing answer, know the contents thereof, and the same is true, as I verily believe.

/s/ HERBERT C. HARDY.

Subscribed and sworn to before me this 28th day of June, 1949.

[Seal] /s/ HAROLD B. HUTCHINSON,
Notary Public for Oregon.

My commission expires 8-12-50.

Due and legal service of the within Answers, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, this 29th day of June, 1949.

/s/ W. A. FRANKLIN,
Of Attorneys for Plaintiff.

[Endorsed]: Filed June 29, 1949; Circuit Court, Oregon.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182-988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP
RODGERS,

Defendants.

AMENDED COMPLAINT

Now comes plaintiff and brings this, his Amended Complaint, and for cause of action against defendants, alleges:

I.

That at all times mentioned herein, defendant Harold M. Kalahar was employed by the National Literary League, Inc., an Ohio corporation, to travel about the country as an independent contractor and solicit magazine subscriptions on behalf of said National Literary League, Inc.

II.

That in connection with his said employment said defendant Harold M. Kalahar did travel about from state to state, and town to town, soliciting magazine subscriptions, and did hire certain salesmen to solicit magazine subscriptions on behalf of himself and National Literary League, Inc.; that defendant Harold M. Kalahar paid said solicitors on a com-

mission basis, and in connection with said employment, defendant Harold M. Kalahar did furnish free transportation to said solicitors from state to state, and city to city, and said transportation was part of the compensation paid solicitors for their services; that in addition to the commissions and transportation, said defendant Harold M. Kalahar did furnish a driver to transport said solicitors from place to place.

III.

That at all times herein mentioned Corinne Constance Getlin was employed by defendant Harold M. Kalahar as a solicitor, and was provided transportation from place to place in a vehicle owned by defendant Harold M. Kalahar, and was compensated on a commission basis for her services.

IV.

That on or about August 31, 1947, Corinne Constance Getlin was being transported from Pendleton, Oregon, to The Dalles, Oregon, in a 1946 model Chevrolet station wagon owned by defendant Harold M. Kalahar, and operated by defendant Philip Rodgers, agent of said defendant Harold M. Kalahar; that said transportation was pursuant to Corinne Constance Getlin's contract of employment with defendant Harold M. Kalahar; that approximately 2:15 p.m. on said date, defendant Philip Rodgers was driving said automobile in a westerly direction on U. S. Highway No. 730; that near Mile Post 175, near Boardman, Oregon, said de-

fendant Philip Rogers so negligently and carelessly operated said vehicle that he caused the same to come into violent collision with a vehicle then and there being driven in an easterly direction by one James Ernest Tyler, causing personal injuries to said Corinne Constance Getlin, proximately causing her death on said day.

V.

That defendants, and each of them, were careless, reckless and negligent in the operation of the station wagon of the defendant Harold M. Kalahar, in the following particulars:

1. In driving said vehicle at a dangerous and reckless speed under the circumstances then and there existing;

2. In failing and neglecting to maintain a proper or any lookout for curves in said Highway, or for other vehicles then and there using said Highway;

3. In failing and neglecting to keep said vehicle under proper control so as to then and there be able to stop, swerve or otherwise avoid striking the said vehicle owned and operated by said James Ernest Tyler;

4. In driving and operating said automobile across and onto the wrong or southerly one-half of said Highway;

5. In engaged in racing with another automobile owned and operated by defendant Harold M. Kalahar at the said time and place.

VI.

That as a direct and proximate result of the careless, reckless and negligent operation of said vehicle, as aforesaid, said Corinne Constance Getlin was thrown from said automobile and killed.

That plaintiff is the husband of said deceased, and that deceased left no surviving dependents.

VII.

That heretofore and by virtue of certain proceedings had in the Circuit Court of the State of Oregon, for Multnomah County, Probate Department, plaintiff was appointed administrator of the estate of said deceased, and Letters of Administration have been issued.

VIII.

That by reason of the wrongful death of said Corinne Constance Getlin, plaintiff necessarily incurred burial expenses in the sum of \$729.28.

That said Corinne Constance Getlin was a sales girl by occupation, and earned upwards of \$200.00 per month, and was of the age of seventeen years; that she was industrious and of good health and habits, and had she survived the plaintiff would have derived pecuniary benefits from the deceased to the extent of not less than ~~Ten Thousand Dollars (10,000.00)~~, \$9,270.72, and that by reason of the death of said Corinne Constance Getlin plaintiff has been and is damaged in the sum of Ten Thousand Dollars (\$10,000.00); that plaintiff maintains this action for the benefit of himself as widower of said deceased.

Wherefore, plaintiff demands judgment against defendants and each of them for the sum of Ten Thousand Dollars (\$10,000) and for his costs and disbursements incurred herein.

LORD, ANDERSON &
FRANKLIN,

By /s/ W. A. FRANKLIN,
Attorneys for Plaintiff.

State of Oregon,
County of Multnomah—ss.

I, W. A. Franklin, being first duly sworn, on oath say that I am one of the attorneys for the above-named plaintiff; I know the contents of the foregoing Amended Complaint and believe the same to be true. I make this verification for the reason that plaintiff is not at this time within Multnomah County.

/s/ W. A. FRANKLIN.

Subscribed and sworn to before me this 17th day of June, 1949.

[Seal] /s/ MARIE BENNETT,
Notary Public for Oregon.

My commission expires 1/31/53.

Service by copy admitted this 20th day of June, 1949.

/s/ HERBERT C. HARDY,
Of Attorneys for Defendants.

[Endorsed]: Filed June 20, 1949; Circuit Court, Oregon.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 182988

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

HAROLD M. KALAHAR and PHILIP ROGERS,
Defendants.

COMPLAINT

Comes Now the plaintiff and for cause of action
against the defendants herein, complains and alleges
as follows:

I.

That at all times mentioned herein, defendant,
Harold M. Kalahar, was employed by the National
Literary League, Inc., an Ohio Corporation, to
travel about the country as an independent con-
tractor and solicit magazine subscriptions on behalf
of said National Literary League, Inc.

II.

That in connection with his said employment de-
fendant, Harold M. Kalahar, did travel about from
state to state, and from town to town, soliciting
magazine subscriptions, and did hire certain sales-
men to solicit magazine subscriptions on behalf of
himself and National Literary League, Inc. That
defendant, Harold M. Kalahar, paid said solicitors
on a commission basis and in connection with said

employment, defendant, Harold M. Kalahar, did furnish free transportation to said solicitors from state to state, and city to city, and said transportation was part of the compensation paid solicitors for their services; that in addition to the commissions and transportation said defendant, Harold M. Kalahar, did furnish a driver to transport said solicitors from place to place.

III.

That at all times herein mentioned, plaintiff was employed by defendant, Harold M. Kalahar, as a solicitor and was provided transportation from place to place in a vehicle owned by defendant, Harold M. Kalahar, and was compensated on a commission basis for her services.

IV.

That on or about August 31, 1947, plaintiff was being transported from Pendleton, Oregon, to The Dalles, Oregon, in a 1946 model Chevrolet station wagon, owned by defendant, Harold M. Kalahar, and operated by defendant, Philip Rodgers, agent of defendant, Harold M. Kalahar; that said transportation was pursuant to plaintiff's contract of employment with Harold M. Kalahar; that at approximately 2:15 p.m., on said date, defendant, Philip Rodgers, was driving said automobile in a westerly direction on U. S. Highway No. 730; that near Mile Post No. 175, near Boardman, Oregon, said defendant, Philip Rodgers, so negligently and

carelessly operated said vehicle that he caused the same to come into violent collision with a vehicle then and there being driven in an easterly direction by one James Ernest Tyler, causing personal injuries to plaintiff, as hereinafter alleged.

V.

That defendatnts, and each of them, were careless, reckless and negligent in the operation of the defendant, Harold M. Kalahar's station wagon, in the following particulars:

1. In driving said vehicle at a dangerous and reckless speed under the circumstances then and there existing.

2. In failing and neglecting to maintain a proper, or any lookout for curves in said highway, or for other vehicles then and there using said highway.

VI.

That as a direct and proximate result of the careless, reckless and negligent operation of said vehicle, as aforesaid, Corinne Constance Getlin was thrown from said automobile and killed.

That plaintiff is the husband of said deceased and that deceased left no surviving dependents.

VII.

That heretofore, and by virtue of certain proceedings had in the Circuit Court of the State of Oregon, for Multnomah County, Probate Department, plaintiff was appointed administrator of the Estate of said deceased and Letters of Administration have been issued.

VIII.

That said Corinne Constance Getlin was a sales girl by occupation and earned upwards of \$200.00 per month and was of the age of seventeen years; that she was industrious and of good habits and in good health and had she survived, would have accumulated an estate in excess of \$10,000.00, and that by reason of the death of said Corinne Constance Getlin plaintiff has been and is damaged in the sum of Ten Thousand Dollars (\$10,000.00); that plaintiff maintains this action for the benefit of the estate of deceased.

Wherefore, plaintiff demands judgment against defendants, and each of them, for the sum of Ten Thousand Dollars (\$10,000.00), and for his costs and disbursements incurred herein.

LORD, ANDERSON AND
FRANKLIN,

By /s/ W. A. FRANKLIN,
Attorneys for Plaintiff.

State of Oregon,
County of Multnomah—ss.

I, W. A. Franklin, being first duly sworn, say that I am one of the attorneys for plaintiff in the within-entitled action and that the foregoing Complaint is true as I verily believe; that I make this verification for the reason that plaintiff is not now within Multnomah County.

/s/ W. A. FRANKLIN.

Subscribed and sworn to before me this 14th day of June, 1947.

[Seal] /s/ WM. P. LORD,

Notary Public for Oregon.

My commission expires 2/4/1949.

State of Oregon,

County of Multnomah—ss.

No.1834

I Al. L. Brown, County Clerk and Ex-Officio Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, a Court of Record, Do Hereby Certify that the foregoing copy of Complaint, Amended Complaint, Answer to Amended Complaint, Verdict and Judgment Order, case No. 182-988, Robert Carl Getlin vs. Harold M. Kalahar and Philip Rodgers, has been compared by me with the original and that it is a correct transcript therefrom, and of the whole of such original Complaint, Amended Complaint, Answer, Verdict & Judgment as the same appears on file and of record in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 20th day of October, A.D., 1950.

[Seal] AL. L. BROWN,
County Clerk.

By /s/ C. BROOKS,
Deputy.

[Endorsed]: Filed June 16, 1948, Circuit Court, Oregon.

[Endorsed]: Filed January 8, 1951; U.S.D.C.

EXHIBIT C

May 26, 1949.

Mr. Harold M. Kalahar

Re: Mason, Cannon, Smith, Nickerson and
Getlin v. Kalahar and Rodgers (five
cases)

Dear Mr. Kalahar:

In connection with the above-entitled cases, it would appear from the allegations in the amended complaints that plaintiffs are expecting to base their recovery upon the existence of an employer-employee relationship between you and the plaintiffs. We have investigated this relationship and we now have arrived at the conclusion that there probably was an employer-employee relationship between you and the plaintiffs.

We direct your attention to the following provisions of your policy:

“Exclusions

This policy does not apply:

(d) Under coverages A and C [A—bodily injury liability, and C—medical payments], to bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or under Coverage A, while engaged in the operation, maintenance or repair of the automobile;

(e) Under Coverage A, to any obligation for which the insured or any company as his

insurer may be held liable under any workmen's compensation law;"

(Bracketed material added)

We invite your attention to the fact that under Clause (e) of the Exclusions set forth above, there is excluded from coverage obligations for which you may be held liable under any workmen's compensation law.

It is now time that an answer be filed. If we are to undertake the defense of these cases under the provisions of our policy, our attorneys, in preparing the answers, will be obliged to admit the allegations of the complaints setting forth the employer-employee relationships between the plaintiffs and yourself, unless, of course, you have further information which is contrary to the facts as they now appear.

It also appears that since the employer-employee relationship exists, the plaintiffs' remedies probably lie under the workmen's compensation acts of the states in which they were hired and our attorneys will undoubtedly assert such defense. If this defense prevails, it is our opinion that these present cases will be dismissed in Oregon and the plaintiffs may seek their remedies under the workmen's compensation laws of other states. Of course it may be that in some of the cases the plaintiff would have no remedy under the workmen's compensation law of the state in which he was hired and if there was no such remedy, then that particular plaintiff's present suit would be construed to be a common law action of an employee against an employer. On

EXHIBIT C

May 26, 1949.

Mr. Harold M. Kalahar

Re: Mason, Cannon, Smith, Nickerson and
Getlin v. Kalahar and Rodgers (five
cases)

Dear Mr. Kalahar:

In connection with the above-entitled cases, it would appear from the allegations in the amended complaints that plaintiffs are expecting to base their recovery upon the existence of an employer-employee relationship between you and the plaintiffs. We have investigated this relationship and we now have arrived at the conclusion that there probably was an employer-employee relationship between you and the plaintiffs.

We direct your attention to the following provisions of your policy:

“Exclusions

This policy does not apply:

(d) Under coverages A and C [A—bodily injury liability, and C—medical payments], to bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or under Coverage A, while engaged in the operation, maintenance or repair of the automobile;

(e) Under Coverage A, to any obligation for which the insured or any company as his

insurer may be held liable under any workmen's compensation law;"

(Bracketed material added)

We invite your attention to the fact that under Clause (e) of the Exclusions set forth above, there is excluded from coverage obligations for which you may be held liable under any workmen's compensation law.

It is now time that an answer be filed. If we are to undertake the defense of these cases under the provisions of our policy, our attorneys, in preparing the answers, will be obliged to admit the allegations of the complaints setting forth the employer-employee relationships between the plaintiffs and yourself, unless, of course, you have further information which is contrary to the facts as they now appear.

It also appears that since the employer-employee relationship exists, the plaintiffs' remedies probably lie under the workmen's compensation acts of the states in which they were hired and our attorneys will undoubtedly assert such defense. If this defense prevails, it is our opinion that these present cases will be dismissed in Oregon and the plaintiffs may seek their remedies under the workmen's compensation laws of other states. Of course it may be that in some of the cases the plaintiff would have no remedy under the workmen's compensation law of the state in which he was hired and if there was no such remedy, then that particular plaintiff's present suit would be construed to be a common law action of an employee against an employer. On

the other hand, they can amend their present complaints and proceed in this state on some other theory of liability, but, of course, we cannot prophesy what they will do.

In the event that the Oregon court should decide that there was an employer-employee relationship between you and the plaintiffs, then we would not consider any judgment rendered against you as being covered by your policy, and, of course, we would refuse to pay such judgment.

In the light of possible developments in the defense of these cases, we wish to advise you as follows:

1. If we are to defend these cases, our attorneys will, unless circumstances not now foreseen indicate the desirability of some other course, interpose the defense that the plaintiffs' remedies are confined to the workmen's compensation laws of the states where they were hired because of the employer-employee relationship between them and yourself.

2. Because our policy excludes coverage when the party injured is your employee, there will be a very definite conflict of interest between the position of this company and yourself. Therefore, we are advising you at this time that you have a right to engage your own attorney to protect your interests. If you desire to engage your own attorney, our attorneys will be instructed fully to cooperate with your attorney and will furnish to him all facts and data which he may desire and which we have in our possession. Your own attorney will,

of course, advise you as to the course you should pursue. However, our attorneys will cooperate with him in every respect.

3. It should be clearly understood that whether you retain independent counsel or not, any defense furnished to you by this Company is furnished with the understanding that this Company fully reserves its right to refuse to pay any judgment that may be rendered against you. The Company does not waive such rights by proceeding with the defense of these cases.

4. We wish to remind you of the fact that all of these claims in the aggregate are in excess of your policy, which fact was pointed out to you in our letter of September 16, 1948.

We are sending two copies of this letter to you at each of the various addresses which we have had from you from time to time, since our recent attempts to contact you have proved unsuccessful. Therefore, upon receipt of the set of letters which reaches you first, please acknowledge receipt thereof by signing one of the copies and return it to us.

We finally urge you to make your decision in the immediate future respecting the defense of this case and advise us as soon as possible.

Very truly yours,

MARYLAND CASUALTY
COMPANY,

By J. P. STAPLETON.

JPS:blw

EXHIBIT D

May 26, 1949

Mr. Phillip Rodgers

Re: Mason, Cannon, Smith, Nickerson and
Getlin v. Kalahar and Rodgers (five
cases)

Dear Mr. Rodgers:

In connection with the above-entitled cases, it would appear from the allegations in the amended complaints that plaintiffs are expecting to base their recovery upon the existence of an employer-employee relationship between the plaintiffs and Mr. Kalahar. We have investigated this relationship and we now have arrived at the conclusion that there probably was an employer-employee relationship between the plaintiffs and Mr. Kalahar. We have also arrived at the conclusion that you were an employee of Mr. Kalahar at the time of the accident and within the course of your employment at that time of the accident.

We direct your attention to the following provisions of the policy of insurance carried by Mr. Kalahar at the time of the accident and covering the station wagon which you were then operating:

“Insuring Agreements

The insurance with respect to any person or organization other than the named insured does not apply:

(d) To any employee with respect to injury to or death of another employee of the

same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.”

It is now time that an answer be filed. If we are to undertake the defense of these cases under the provisions of Mr. Kalahar's policy, our attorneys, in preparing the answer, will be obligated to admit the allegations of the complaint setting forth the employer-employee relationships between the plaintiffs and Mr. Kalahar and of the agency relationship between you and Mr. Kalahar, unless, of course, we receive further information which is contrary to the facts as they now appear.

It also appears that since the employer-employee relationship exists, the plaintiffs' remedies probably lie under the workmen's compensation acts of the states in which they were hired and our attorneys will undoubtedly assert such a defense. If this defense prevails, it is our opinion that these present cases will be dismissed in Oregon and the plaintiffs may seek their remedies under the workmen's compensation laws of other states. Of course it may be that in some of the cases the plaintiff would have no remedy under the workmen's compensation law of the state in which he was hired and if there was no such remedy then that particular plaintiff's present suit would be construed to be a common law action of an employee against an employer. On the other hand, they can amend their present complaints and proceed in this state

on some other theory of liability, but, of course, we cannot prophesy what they will do.

In the event that the Oregon court should decide that there was an employer-employee relationship between plaintiffs and Mr. Kalahar and that plaintiffs were co-employees of you with Mr. Kalahar, then we would not consider any judgement rendered against you as being covered by the policy, because of the foregoing quoted portions of the policy, and, of course, we would refuse to pay such judgment.

In the light of possible developments in the defense of these cases, we wish to advise you as follows:

1. If we are to defend these cases, our attorneys will, unless circumstances not now foreseen indicate the desirability of some other course, interpose the defense that the plaintiffs' remedies are confined to the workmen's compensation laws of the states where they were hired because of the employer-employee relationship between them and Mr. Kalahar.

2. Because our policy excludes coverage when the party injured is a co-employee and the injury occurred in the course of employment, there will be a very definite conflict of interest between the position of this Company and yourself. Therefore, we are advising you at this time that you have a right to engage your own attorney to protect your interests. If you desire to engage your own attorney, our attorneys will be instructed fully to cooperate with your attorney and will furnish to him all facts

and data which he may desire and which we have in our possession. Your own attorney will, of course, advise you as to the course you should pursue. However, our attorneys will cooperate with him in every respect.

3. It should be clearly understood that whether you retain independent counsel or not, any defense furnished to you by this Company is furnished with the understanding that this Company fully reserves its right to refuse to pay any judgment that may be rendered against you. The Company does not waive such rights by proceeding with the defense of these cases.

We are sending two copies of this letter to you; please acknowledge its receipt by signing one of the copies and returning it to us.

We finally urge you to make your decision in the immediate future respecting the defense of these cases and advise us as soon as possible.

Very truly yours,

MARYLAND CASUALTY
COMPANY,

By J. P. STAPLETON.

JPS:blw

[Title of District Court and Cause.]

FINDINGS OF FACT

The above-entitled cause came before me on the 18th day of December, 1951, plaintiff appearing by Wesley Franklin, of Lord, Anderson & Franklin, and defendant appearing by Herbert C. Hardy, of Cake, Jaureguy & Tooze. The cause was tried without a jury, and after argument, briefs were submitted, the facts having been set forth in the pre-trial order. The facts upon which the judgment of the court is based are as follows:

1. Defendant was at all times herein pertinent, and now is a corporation organized under the laws of the State of Maryland, and is authorized and licensed to do business in Oregon and Texas, and as a part of its business to issue policies of automobile liability insurance in favor of owners of automobiles.

2. The plaintiff is the duly appointed, qualified and acting administrator of the Estate of Corinne Constance Getlin, deceased, by virtue of proceedings in the Circuit Court of the State of Oregon, County of Multnomah, Probate Department, and is a citizen of the State of Oregon.

3. At all times mentioned herein, one Harold M. Kalahar, hereinafter referred to as Kalahar, was the owner of a 1946 Chevrolet station wagon.

4. At all times herein pertinent, there was in full force and effect a certain automobile public

liability policy issued by the defendant herein to Kalahar and covering the above-described 1946 Chevrolet station wagon. This policy contained an exclusion section which provided that the policy did not apply:

“(d) Under coverages A and X, [A—bodily injury liability, and X—medical payments], to bodily injury to or death to any employee of the insured while engaged in the employment, other than domestic, of the insured, * * *

“(e) Under coverage A, to any obligation for which the insured or any company as his insurer may be held liable under any workmen’s compensation law;”

(Bracketed material added by way of explanation.)

5. Defendant’s Exhibit A, comprised of a photostatic copy of the basic liability form of automobile policy of the Maryland Casualty Company of Baltimore, a photostatic copy of the home office copy of the specifications regarding the policy limits, the description of the assured and his vehicle, and a photostatic copy of the rider (form 158) attached to said automobile policy, constitute the policy of liability insurance issued by defendant to Kalahar, and is the policy on which plaintiff relies in this action.

6. On August 31, 1947, the decedent, together with Rodgers and several other magazine soliciting employees of Kalahar, were being transported in said 1946 Chevrolet station wagon from Spokane,

Washington, where they had been soliciting magazine subscriptions, to Portland, Oregon, where they were to do like soliciting. Said transportation was pursuant to their respective contracts of employment with Kalahar.

7. While decedent was thus en route from Spokane to Portland in said 1946 Chevrolet station wagon with several other employees of Kalahar, an accident occurred between the 1946 Chevrolet station wagon then being driven by Philip Rodgers, and another vehicle. As a result of that accident, the decedent was killed.

8. On June 16, 1948, the present plaintiff commenced an action against Kalahar and Philip Rodgers by the filing of a complaint for damages for the wrongful death of the decedent, Corinne Constance Getlin, in the Circuit Court of the State of Oregon, for the County of Multnomah, said case being numbered 182-988. An amended complaint was filed in said action on June 20, 1948, which changed no allegations pertinent to the present case.

9. In said complaint the plaintiff alleged that Kalahar did hire certain salesmen, paid them on a commission basis and in connection with said employment did furnish free transportation to said solicitors from state to state and city to city, said transportation being a part of the compensation paid solicitors for their services; that Corinne Constance Getlin was so employed and that at the time of the accident and her death, was being trans-

ported in Kalahar's car driven by Rodgers, pursuant to her contract of employment with Kalahar; that Kalahar and Rodgers were guilty of negligence which caused decedent's death, wherefore plaintiff demanded \$10,000 in damages. This Court finds the facts thus alleged in said complaint to be the true facts.

10. The defendant herein, Maryland Casualty Company, after the filing of said complaint, advised Kalahar in writing that the complaint was based on an employer-employee relationship between Kalahar and the decedent and that it would not pay any judgment against Kalahar based on such a relationship because of the provisions of the Exclusion section of said policy which provided that the policy did not apply

“(d) under coverages A and X, to bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, * * *”

The defendant herein further advised the said Kalahar that any defense furnished by it in said action would be under a full reservation of right to refuse to pay any judgment, and that it did not waive any of its rights by proceeding with the defense of such case. The present defendant further advised Kalahar that he had a right to engage his own attorney to defend said action, but Kalahar did not do so.

11. Thereafter, this defendant did cause its attorneys, Cake, Jaureguy & Tooze and Herbert C.

Hardy, to interpose an answer in said case in the Circuit Court of the State of Oregon for the County of Multnomah, which answer denied all of the allegations of the plaintiff's complaint therein.

12. Defendant's Exhibit B, comprised of photostatic copies of the complaint, amended complaint, answer to amended complaint, verdict and judgment order, all of which have been certified by the County Clerk of Multnomah County, were the pleadings used and the verdict and judgment order rendered in the case of Getlin vs. Kalahar and Rodgers brought by the plaintiff herein in the Circuit Court of the State of Oregon for the County of Multnomah, case No. 182-988.

13. On February 6, 1950, said case came on for trial in said court before the Honorable Charles W. Redding and was tried by a jury. After both parties had rested in said case, the trial judge instructed the jury on the issues of the case, defendant's Exhibit E being a certified copy of all of the instructions to the jury given in that case, said trial judge specifically instructing the jury in part as follows:

"I instruct you that before you can bring in any verdict in this case against the individual defendant Harold M. Kalahar you must also find that the defendant Philip Rodgers was an employee of the defendant Kalahar and also that the decedent, Corinne Constance Getlin, was also an employee of the defendant Kalahar as I shall later define that relationship to you.

“You are instructed that in determining whether or not the decedent, Corinne Constance Getlin, and the defendant Philip Rodgers were employees of the defendant Harold M. Kalahar, the test as to the existence of the relationship is whether there is an understanding between the parties that one is to render personal services to or for the benefit of the other and recognition by them of the right of Harold M. Kalahar to order and control the other in the performance of the work and to direct the manner and method of its performance.”

14. Thereafter the jury did take said case under consideration and did render its verdict in favor of the plaintiff and against the defendant Kalahar and the defendant Rodgers, and each of them, and adjudged the plaintiff's damages in the sum of Five Thousand Dollars (\$5,000). Based upon said verdict, the Honorable Charles W. Redding did on the 21st day of February, 1950, enter a judgment in favor of the present plaintiff against the said Harold M. Kalahar and Philip Rodgers, and each of them, in the sum of Five Thousand Dollars (\$5,000), together with plaintiff's costs and disbursements in the amount of One Hundred Fifty-three Dollars Sixty Cents (\$153.60), which judgment was entered in the journal on February 21, 1950, and docketed on February 23, 1950, in Book 46, page 127, and is the judgment upon which the plaintiff bases this present action.

15. The defendant herein has refused to pay to the plaintiff said judgment, or any part thereof.

16. The parties have stipulated that defendant's policy does not cover the defendant Rodgers, and that regardless of the outcome of this lawsuit, no judgment can be rendered in this case against the defendant Maryland Casualty Company based solely upon the judgment against Philip Rodgers.

Conclusions of Law

Based on the foregoing findings of fact, the court's conclusions of law are as follows:

I.

The action brought by the plaintiff herein in the Circuit Court of the State of Oregon, for the County of Multnomah, against Kalahar, the defendant's insured, and Rodgers, the driver of Kalahar's car, determined that the decedent was an employee of the insured and that at the time of the fatal accident she was engaged in the employment of Kalahar within the meaning of the policy, and the issue is now *res judicata*.

II.

Even if the Circuit Court action in Oregon is not determinative of decedent's status at the time of the accident on the basis of the above findings of fact, the decedent was, at the time of the fatal accident, an employee engaged in the employment of the insured within the meaning of the exclusionary clause contained in the automobile public liability policy issued by the defendant to Kalahar.

III.

The insured's (Kalahar's) liability to plaintiff is not covered by the automobile public liability policy issued by the defendant to Kalahar, since the policy expressly excludes liability for "bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured * * *."

IV.

Defendant is not liable under the automobile public liability policy issued by it to the insured for the liability imposed upon insured by the verdict and judgment rendered in the case of Getlin, et al., vs. Kalahar and Rodgers, in the Circuit Court of the State of Oregon, for the County of Multnomah, case No. 183-988.

V.

A final judgment should be entered in favor of the defendant and against the plaintiff.

Dated this 18th day of June, 1951.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed June 18, 1951.

In the District Court of the United States
for the District of Oregon

Civil No. 5776

ROBERT CARL GETLIN, Administrator of the
Estate of Corinne Constance Getlin, Deceased,
Plaintiff,

vs.

MARYLAND CASUALTY COMPANY, a Cor-
poration,
Defendant.

JUDGMENT

Now, therefore, based upon said Findings of Fact
and Conclusions of Law,

It Is Hereby Ordered and Adjudged that defend-
ant have judgment against the plaintiff and that the
plaintiff take nothing from the defendant herein.

Dated this 18th day of June, 1951.

/s/ GUS J. SOLOMON,
United States District Judge.

[Endorsed]: Filed June 18, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the plaintiff, Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this case on the 18th day of June, 1951, and from the whole thereof.

Dated this 12 day of July, 1951.

ANDERSON & FRANKLIN,

By /s/ W. A. FRANKLIN,

Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed July 12, 1951.

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Know All Men by These Presents, that we, Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, appellant, as Principal, and Kathryn Engele, as Surety, are held and firmly bound unto Maryland Casualty Company, a corporation, defendant, in the full sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said Maryland Casualty Company, a corporation,

defendant, or its assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29 day of June, in the Year of Our Lord One Thousand Nine Hundred Fifty-one.

Whereas, on June 18, 1951, in the District Court of the United States for the District of Oregon, in an action depending between the said Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, plaintiff, and said Maryland Casualty Company, a corporation, defendant, a judgment was rendered against the said appellant and the said appellant having filed in said Court a Notice of Appeal to reverse the judgment in the aforesaid action on appeal to United States Court of Appeals for the Ninth Circuit, at San Francisco, California,

Now, the condition of the above obligation is such that if the said appeal is dismissed, or the judgment affirmed or modified, the said Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, Appellant, and Kathryn Engele, Surety, do hereby jointly and severally undertake and promise on the part of the appellant that said appellant will pay all damages, costs and disbursements which may be awarded against appellant on appeal.

[Seal] /s/ ROBERT C. GETLIN,

[Seal] /s/ KATHRYN ENGELE.

United States of America,
District of Oregon—ss.

Kathryn Engele, whose name is subscribed to the within undertaking as surety, being duly sworn, deposes and says that she is a free-holder within said District, and is worth the sum of Five Hundred Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

/s/ KATHRYN ENGELE.

Subscribed and sworn to before me this 29th day of June, 1951.

[Seal] /s/ WESLEY A. FRANKLIN,
Notary Public for Oregon.

My Commission expires 12/22/52.

[Endorsed]: Filed July 12, 1951.

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of complaint, answer, pre-trial order, findings of fact and conclusions of law, judgment, notice of appeal, undertaking on appeal, statement of points, designation of contents of record, and transcript of docket entries, constitute the record on appeal from a judg-

ment of said court in a cause therein numbered Civil 5776, in which Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, is plaintiff and appellant, and the Maryland Casualty Company, a corporation, is defendant, and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 3rd day of August, 1951.

LOWELL MUNDORFF,
Clerk.

[Seal] By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 13046. United States Court of Appeals for the Ninth Circuit. Robert Carl Getlin, Administrator of the Estate of Corinne Constance Getlin, Deceased, Appellant, vs. Maryland Casualty Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed August 6, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13046

ROBERT CARL GETLIN, Administrator of the
Estate of CORINNE CONSTANCE GETLIN,
Deceased,

Appellant,

vs.

MARYLAND CASUALTY COMPANY, a Corpo-
ration,

Appellee.

STATEMENT OF THE POINTS ON WHICH
APPELLANT INTENDS TO RELY

Pursuant to Rule 19(6) of the Rules of this Court, the appellant presents the following statement of the points upon which he intends to rely on this appeal:

1. The trial court erred in concluding that the action brought by appellant in the Circuit Court of the State of Oregon for the County of Multnomah against Harold M. Kalahar, appellee's insured, determined that the decedent was an employee of Kalahar and "engaged in the employment of the insured" at the time of the fatal accident, within the meaning of the policy and that the issue is res judicata.

2. The trial court erred in concluding that decedent at the time of the fatal accident was an

employee "engaged in the employment" of appellee's insured, Kalahar, within the meaning of the exclusive clause contained in the automobile public liability policy, issued to Kalahar by the appellee.

3. The trial court erred in concluding that the liability of the insured (Kalahar) to appellant was not covered by the automobile public liability policy issued by appellee to Kalahar.

4. The Findings of Fact do not support the trial court's Conclusions of Law and Judgment.

ANDERSON & FRANKLIN,

By /s/ W. A. FRANKLIN,

Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 10, 1951.

[Title of District Court and Cause.]

DESIGNATION OF THE CONTENTS OF
RECORD ON APPEAL

Robert Carl Getlin, administrator of the estate of Corinne Constance Getlin, deceased, the above-named appellant, hereby designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal:

The complete record and all the proceedings and evidence in the said action which shall include:

Complaint.

Answer.

Pre-trial order, together with all exhibits attached thereto.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Designation of the matter to be included in the record.

Undertaking on appeal, costs.

Statement of Points upon which appellant intends to rely.

Stipulation for hearing at San Francisco.

ANDERSON & FRANKLIN,

By /s/ W. A. FRANKLIN,

Attorneys for

Plaintiff-Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 10, 1951.

